

at least one taste masking agent. One embodiment of the present invention provides for a consumable film wherein the at least one water soluble polymer is pullulan, the at least one pharmaceutically active agent is dextromethorphan and the at least one taste masking agent is a sulfonated polymer ion exchange resin comprising polystyrene cross-linked with divinylbenzene.

The Office Action alleges that Fischer discloses a sustained release composition containing dextromethorphan and a sulphonated polymer ion exchange resin. Ozaki is cited for its disclosure of a consumable film containing pullulan. The Action contends that it would have been obvious to combine these two references to have a resulting composition to be useful in the form of a consumable film. Applicants traverse this rejection and respectfully submit that withdrawal of the rejection is appropriate.


The consistent criterion for the determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that a claimed invention should be carried out and would have a reasonable likelihood of success when viewed in the light of the prior art. Both the suggestion and expectation of success must be found in the prior art, not in the Applicant's disclosure. *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988). Applicants submit that the teaching of the combined cited prior art references fail to teach or suggest that there would be a reasonable likelihood of success that a taste masking agent, such as a sulphonated polymer ion exchange resin, would be effective in a consumable film. Thus, Applicants respectfully submit that these references are not combinable and withdrawal of such obviousness rejection is warranted.

Additionally, the Examiner is not permitted to engage in hindsight reconstruction of the claimed invention, using Applicants' teachings as a "template" to piece together the teachings of the prior art. To combine references to reach a conclusion that claimed subject matter would have been obvious, case law requires that there must be some teaching, suggestion or inference in either reference, or both, or knowledge generally available that would have led one of ordinary skill in the art to combine the relevant teachings of the references. When the incentive to combine the teachings of the references is not readily apparent, it is the duty of the Examiner to explain why a combination of the reference teachings is proper. Absent such reasons or incentives, the teachings of the references are not combinable. *Ex parte Skinner*; 2 USPQ2d 1788 (BPAI 1986). The Examiner neither provides nor alleges that the references so provide a reason which would lead one skilled in the art to combine the teachings of the prior art. Thus, Applicants respectfully submit that the references are not combinable and withdrawal of the obviousness rejection is appropriate.

Accordingly, Applicants respectfully request withdrawal of the rejection and respectfully submit that the Application is in condition for allowance and favorable reconsideration is therefore respectfully requested.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the number listed below.

Respectfully submitted,



Barry H. Jacobsen
Attorney for Applicants
Reg. No. 43,689

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Warner-Lambert Company
201 Tabor Road
Morris Plains, New Jersey 07950
Phone (973) 385-7072
Fax (973) 385-3117